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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KIMBERLY ALLEN, Personal
Representative of the Estate of TODD
ALLEN, Individually, on Behalf of the
Estate of TODD ALLEN, and On Behalf
of the Minor Child, PRESLEY GRACE
ALLEN

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:04-cv-0131-JKS

**UNITED STATES'
RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL BRIEFING
RE: COMPENSATION**

Pursuant to the Court's Order [Docket 134] the United States submits its response to Plaintiff's Supplemental Briefing Regarding Compensation.

Plaintiff has revised her position and claims regarding non-economic damages to “waive her arguments to this Court that more than one damages cap applies” in this case. [Docket 133, pp. 2-3] Plaintiff now seeks an award of non-economic damages up to the maximum of \$400,000. AS 09.17.010. The United States relies on its opening brief [Docket 125] and will not offer additional argument on these issues.

Plaintiff has proposed an “allocation of the economic losses and the non-economic losses attributable to the wrongful death claim,” as between Mrs. Allen and her minor child, Presley Grace Allen, as set out in her initial brief. [Docket 133, p. 4; Docket 123, pp. 12-13] The Defendant is not in a position to properly assess or comment on the reasonableness or fairness of the allocation of wrongful death damages proposed by Plaintiff. Thus, the Defendant does not offer any argument on these issues.

Finally, Defendant’s position is that it has not agreed or stipulated to any proposal or condition that the damages awarded to the Plaintiff, or any portion thereof, be payable in the form of a structured annuity or any other form of deferred or periodic payment method. Since no specific proposal has been presented by Plaintiff to date, the Defendant reserves its right to assert any objections it may have to any such future proposal.

RESPECTFULLY SUBMITTED on October 16, 2007, in Anchorage,
Alaska.

NELSON P. COHEN
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s/ Gary M. Guarino
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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2007,
a copy of the foregoing **UNITED STATES'**
RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL BRIEFING
RE: COMPENSATION was served
electronically on Donna McCready.

s/ Gary M. Guarino